Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

In the Supreme Court of the United States

Jay M. Struve
v.
Wicomico County, Maryland

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

Jay Struve, *pro se*
7809 Hurley's Neck Road,
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no phone

Questions presented for review

1. Does the act of Congress known as the Uniform Vehicle Code, in a State that has voluntarily adopted it, supersede the local laws concerning zoning, made by charter local counties, as the Vehicle Code restricts local governments from passing laws on the subjects contained in itself?

2. If zoning laws are in irreconcilable conflict with each other concerning the same subject and were made law at the same time, are they unenforceable because no one can reasonably interpret them with certainty, and too vague to be considered a "law" under the U.S. Constitutions' Due Process requirement of a minimum degree of definiteness in the statutory prescription of standards to prevent arbitrary and discriminatory enforcement?

3. If Local Laws severely restricting recreational vehicles, travel trailers, ect. were facially created to ban the Gypsies from the local area, and were and are enforced for that purpose, are those laws in conflict with the Constitutional guarantees of equal protection and due process, that is; are the gypsies, such as this petitioner, considered an ethnic or religious group worthy of protection ?

The Caption of the case contains the names of the parties.

Citations of reports; Unreported in the Court of Special Appeals of Maryland No. 0014, Sept. Term 2006.
Jay Struve v. Wicomico County
Court of Appeals of Maryland, Struve v. Wicomico County, April 13, 2007 Cert. denied No. 616.

STATEMENT OF JURISDICTION

The judgment sought to be reviewed was entered on April 13, 2007, by the Maryland Court of Appeals.
"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a .... statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, ... or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution or the ..... statutes of, or any commission held or authority exercised under, the United States." U.S. Code: Title 28, 1257. Also, U.S. Code Title 28 2104 reviews of State decisions. And

U.S. Constitution Art. III, Section 2." The judicial power [of the Supreme Court] shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made ..... under there authority." And also; U.S. Constitution Article VI; "This Constitution, and the laws of the United States which shall be made in the pursuance thereof; ..... Shall be the supreme law of the land; and the Judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding." And Amendment IV, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated ..... ." Also, Amendment XIV, Section 1. "All persons born ..... in the United States ..... are citizens of the United States and of the State wherein they reside. No State shall ..... deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." And also, in this case, U.S. Constitution Article I, section 8. "The Congress shall have power to..... regulate commerce ..... among the several States .... " because the Uniform Vehicle Code was created under an act of Congress, the Federal Aid Road Act of 1916, 39 Stat. 355 c. 241, and the Act of 1921, 42 Stat. 212 and was under the Department of Agriculture, the

chairman of the National Conference on Street and Highway Safety was Herbert Hoover, the Secretary of Commerce. The Act specifically prohibits local governments such as cities and towns from making any laws on the same subject as those in the Act, and this is the method by which uniformity of vehicle law is created. Maryland adopted the Uniform Vehicle Code in 1943, including the provisions restricting local governments, and the provision providing for private property owners the right to regulate vehicles on their own land "as seems best to them". This Law, however, is being DISREGARDED BY THE COURTS OF MARYLAND, AND THEIR JUDGES AND PUBLIC OFFICIALS. And because The Act is the will of Congress, the Supreme Court of the United States has jurisdiction, if the Justices so choose, to certify the case and decide it. Also, the laws in question were originally designed to rid the County of the gypsies, and I, a citizen of the United States, am one. This is not equal protection, IVX Amendment. The local laws are in conflict with the State laws which prohibit the local laws, but this is not the way the local courts see it. They are allowing the totalitarian control of vehicles and whole classes of vehicles, by local governments, by **zoning the vehicles**. The local laws are in conflict with themselves, as well, to the extent as to make it impossible for a person to determine

the breadth of their scope, or their meaning, with reasonably certainty, and invite arbitrary and discriminatory enforcement. And that is exactly how they are being used, arbitrarily.

Statement of the Case, Argument

Zoning laws were originally designed for urban areas. A different, less strict standard should apply to rural areas. City of Euclid v. Ambler Realty.

Wicomico County is "zoning" chattel property, such as vehicles. This is illegal by State law, the Maryland Vehicle Law, and Federal law, the Uniform Vehicle Code. Both codes provide for the regulation of vehicles on private property by the owner of that property, and no one else, like for instance, the local zoning officials. This law was meant by Congress to be the uniform Law of the land, as were the other provisions of the UVC. The purpose was to inspire commerce among the States.

The local laws in question are in conflict with themselves; One states that recreational vehicles can only be parked on R8 and A1 zoned land, the other states that they may be parked "in all residential districts" and that they may only be occupied seven days out of every ninety. Petitioners land is in a remote, rural area of the county zoned A1, he was told he could not occupy his hunting trailer more than 7 days, but

the judge ruled that the section of zoning code allowing parking of trailers in the developed, urban zones did not apply to A1 zoned properties. A special exception is needed to park one's own vehicle on one's own land, at a cost of $300 per year, renewable annually after a hearing. My exception was denied. I went to court and all the courts ruled against my arguments, and the clear words of the UVC and Md. Vehicle Law. I made the argument about the UVC and Md. Vehicle Law at the first hearing, and pursued it throughout the appeal process, the other arguments were made in the first hearing in Circuit Court and later. However, the Maryland Court of Appeals has ruled that "on appeal a party may attack the validity of a local zoning ordinance even though the issue was Not raised below" Ellicott v. Mayor of Baltimore, 180 Md. 176 (1942). Federal rules regarding the timeliness of raising issues on appeal follow the local rules applicable in each case, generally. The petitioner's arguments are properly before the Court. Maryland's court of last resort has let stand a decision which derogates the Uniform Vehicle Code, an important Act of Congress, to the status of propaganda, and the question of conflict with its provisions and local zoning laws should be settled by the Supreme Court of the United States.

JAY STRUVE	*	IN THE
v.	*	COURT OF APPEALS
WICOMICO COUNTY	*	OF MARYLAND
	*	Petition Docket No. 616 September Term, 2006
	*	(No. 14, Sept. Term, 2006 Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell

Chief Judge

DATE: April 13, 2007

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
No. 0014
September Term, 2006

Jay Struve v. Wicomico County

Murphy, C. J., Moylan, Charles E. Jr, Getty, James S.

Opinion by Moylan, J.

Filed: December 21, 2006

The Appellant, Jay Struve owns a parcel of land Approximately one acre in size, in an A-1 (Agricultural-Rural) zoning district of Wicomico County. As of April of 2005, the appellant had placed Five travel trailers on the property. He was living in one of them, with no electricity, running water, or sewage disposal system, in violation of Chapter 174 of the Wicomico County Code for Nuisances. On April 12 and again on April 15 2005, he received a total of four citations for the failure to remove the vehicles and for the failure to abate a nuisance based on the accumulation of trash and rubbish. The Wicomico County Code, Sec. 225-67, provides that

in an A-1 zone, the use of land for the storage of unoccupied travel trailers is only permittedif the property owner obtains a special exception. There is no provision in the Code which would allow a person to live in a travel trailer on a permanent basis. The Appellant had, in March of 2005, applied for a Special exception to store the travel trailers on his Property. The Staff Report made it clear that the Appellant had been informed that the special exception even if granted, would not constitute permission for him to live in one of the trailers.

> Mr. Struve made this application to allow the travel trailers to remain on the property. Staff has made it clear to Mr. Struve that this request does not seek the Board's approval to allow him to live in any of the campers—Staff's interpretation of the Code is that the Code restricts the occupying of a travel trailer to no more than seven days within a 90-day period, and the Board only has the authority to approve a Special Exception for the storage of unoccupied travel trailers on this property.

On March 31, 2005, the Board of Appeals reviewed the Staff Report and considered the testimony, written evidence, and oral argument presented to it at a public hearing. The Board's written conclusion was to deny the request for a special exception.

The Board reviewed the criteria necessary to approve Special Exception- Temporary Travel Trailers (5) and has determined that the applicant has not met the burden of proof. The Board does however; adopt the factual findings contained in the Staff Evaluation as set forth in paragraph G-1 thru G-7 of the Staff Report as its findings of fact.

The Board has no basis offered from the Applicant to approve his request. It was determined that his whole argument was that the Board did not have the authority deny him his request, but the Applicant failed to address the criteria for the granting of his requested Special Exception. Upon a motion by Gary Boggs, seconded by Joseph Morse with the chair voting AYE, the Board unanimously denied the request and hereby RESOLVES, for the reasons set forth above, that the Applicant's request is hereby DENIED.

The Appellant appealed that decision to the Circuit Court for Wicomico County, which conducted a hearing on January 5, 2006. On January 31, 2006, Judge W. Newton Jackson, III issued an eleven-page Opinion and Order affirming the Board of Appeals.

In his appeal to this Court, the appellant does not challenge the way in which the board of appeals applied special exception law. It is, therefore,

unnecessary for us even to consider that issue. The appellant mounts a single and far more cosmic challenge.

"Are the local laws in this case illegal?"

Some sense of the wide horizon of the appellant's thesis may be had from the opening paragraph of his "Argument".

> Since at least as long ago as Daniel Boone, the famous pioneer, walked the Earth, the citizens of Maryland had the right, unfettered by the police power of the English Crown, or the then new United States, to travel in and live in their travel trailers, which were at that time drawn by horses, and known as "covered wagons" or "coaches". When such a traveler reached his daily destination If on the private property of another, he could inquire of the owner for permission to set up his camp. He needed not to ask permission of any government official to travel or camp and the traveler certainly needed permission from no one to camp and live in his trailer on his own property. In those days the common thing was to use the trailer to live in while traveling and when you got to where you were going, you lived in it until you built your house and cleared the land.

The Appellee, Wicomico County, has elected to respond on somewhat narrower grounds. Ironically, the appellant has supplied the answer to his own challenge.

> As regarding travel trailers, on private property, in Wicomico County, the common law was unchanged From the time of the Revolutionary War until Friday, September 7, 1945 when the County Commissioner's Ordinance No. 1 became effective.

The appellant, of course, is living under the post September 7, 1945 state of the law and there have been some big changes since Daniel Boone moved through the Cumberland Gap. Civilization does all sorts of things that the frontier could never have imagined. In particularizing his argument, the appellant contends that the travel trailers in issue are vehicles and, therefore, are subject to regulation only by the statewide Transportation Article, which preempts local law. He contends that the zoning ordinance in question unconstitutional attempts to regulate where people may park their vehicles, which is not a proper concern of zoning law. His nutshell contention is, "You can't zone vehicles." The appellant's "Conclusion" in his brief well encapsulates his entire argument.

The laws related to vehicular travel are a matter of State-wide concern. The Maryland Laws concerning this subject are expressly preemptive of local legislation. The Transportation Article of the Maryland Code is based on the Uniform Vehicle Code. Neither Code allows for the possibility of local governments to "zone" individual vehicles or classes of vehicles. To insure uniformity of regulation of vehicles, under State law, in the future, Petitioner requests that the Court reverse the decision of the judgment of January 31, 2006 , in this matter, and declare the Local Laws in question here to be null and void.

We are not going to belabor our affirmance of Judge Jackson's affirmance of the County Board of Appeals. Judge Jackson, in his Opinion and Order, dealt with the issue of the authority of Wicomico County to regulate zoning, and we adopt his ruling on that question as our own.

Wicomico County has a charter county form of government authorized under the Maryland Constitution and possessed of various express powers. Md. Const. XI-A et seq.; Md. Code Ann. Art. 25A et seq. (1957). Among them are general police powers, Art. 25A, Sec. 5(S), and the power to enact laws with respect zoning and planning.

Art.25A, Sec. 5(X). The Charter of Wicomico County has vested the full range of those law-making powers in its Council, which in turn has enacted Chapter 225 of the Code, a comprehensive zoning ordinance. To say that the County is without constitutional authority to manage planning and zoning is without merit.

Petitioner's assertion that the County has illegally violated his common law property rights is without merit. County Council v. Investors Funding Corp., 270 Md. 403 (1973).

We also concur with Judge Jackson's ruling that the zoning law in question is not an attempt to regulate the use of vehicles, but is concerned, rather, with the use of land.

As to Petitioner's contention that state and federal law have preempted Wicomico County's authority to regulate the use of his vehicles on his land, those arguments fail for the following reasons. Petitioner first claims that Section 25-101 of the Maryland Transportation Article prohibits the County from regulating the use of his vehicles on his property. Generally, that section prohibits any local authority from enacting any law requiring registration of licensing of vehicles and from

enacting any law contrary to any "subject covered by the Maryland Vehicle Law." TR Sec. 25-101.1. Petitioner's reliance on this statute is misplaced because Wicomico County's zoning controls have nothing to do with licensing and registration, but rather they deal with the storage, parking, and occupancy of vehicles on private property.

JUDGMENT AFFIRMED, COSTS TO BE PAID BY APPELLANT.

UNIFORM VEHICLE CODE 1930,

ARTICLE II, Section 8 :

This Act Not to Interfere with Rights of Owners of Real Property with Reference Thereto.

Nothing in this act shall be construed to prevent the owner of real property that is used by the public for purposes of vehicular travel by permission of the owner and not as a matter of right from prohibiting such use, or from requiring other or different or additional conditions than those specified in this act, or otherwise regulating such use as may seem best to such owner.

Maryland Code Annotated, Transportation Article 25, Subtitle 1. Powers of State and Local Authorities.

Sec. 25-101.1. Statewide application of Maryland Vehicle Law; effect of local regulation.

(a) Provisions statewide in effect.--- Except as otherwise expressly provided, the provisions of the Maryland Vehicle Law are statewide in their effect.
(b) Limitation on local authority.--- Except as otherwise expressly authorized in this subsection or by a public local law on the regulation of taxicabs and taxicab drivers or by any public general law, no local authority or political subdivision of this State may: (1) Require the registration or licensing of any vehicle or driver in addition to the registration and licensing required or authorized in the Maryland Vehicle Law;

(2) Impose on the owner or driver of any vehicle tax, registration fee, license fee, assessment, or charge of any kind for the use of a vehicle on any highway in this State, except for tolls to finance the cost of the construction, maintenance, and operation of any bridge, tunnel or approach thereto constructed as part of the interstate system of highways under Title 23 of the United States Code and from the payment of which vehicles owned by the State are e Exempt; or (3) Otherwise make or enforce any local law, ordinance, or regulation on any subject covered by the Maryland Vehicle Law. 11.

(c) Provisions exclusive of local regulation.--- Except as otherwise provided in the Maryland Vehicle Law: (1) The provisions of the Maryland Vehicle Law prevail over all local legislation and regulation on any subject with which the Maryland Vehicle Law deals; (2) All public local laws, ordinances, and regulations that are inconsistent or identical with or equivalent to any provision in the Maryland Vehicle law are repealed; and

(3) The charters of all political subdivisions of this State are modified to prohibit the political subdivision from making or enforcing any ordinance or regulation in violation of the Maryland Vehicle Law.

(d) [Irrelevant]

Maryland Code Annotated Transportation
Sec. 11-205. Private Rights Preserved.

(a) [irrelevant]

(b) Rights of owners of real property.---- The provisions of the Maryland Vehicle Law do not prevent the owner of any real property that is used,

with permission of the owner and not as a matter of right, by the public for vehicular travel from:

(1) Prohibiting the use

(2) Requiring the use to be subject to conditions Other than those specified in the Maryland Vehicle Law; or (3) Otherwise regulating the use in his discretion.

(c) Calvert County.---

Maryland Code Annotated, Transportation Sec. 21-1004. Additional parking regulations

(e) Stopping, standing or parking on private property ----- A person may not stop, stand, or park a vehicle on any private property not owned by the owner or driver of the vehicle unless the person has express or implied permission from the property owner, his tenant, or his agent to stop, stand or park the vehicle, as the case may be.

No. _____

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ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI
Certificate of Service

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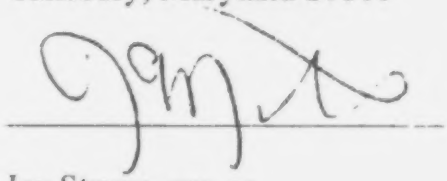
no phone

CERTIFICATE OF SERVICE

Every party required to be served have been served. I, Jay Struve, do swear under the federal penalty of perjury that I did mail, first class postage prepaid, or had sent for delivery by courier, on Sept. 4, 2007 An Exact copy of the forgoing documents to;

Edgar Baker, Attorney for Wicomico County. Md.
110 North Division St. Salisbury, Maryland 21810
410-742 8176



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